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John Carter Brown.

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THE
Rights of Parliament
VINDICATED,

On Occasion of the late

STAMP - ACT.

In which is exposed

THE CONDUCT
OF THE
AMERICAN COLONISTS.

Addressed to all the People of

GREAT BRITAIN.

“ Omnem Divini, humanique moris Memoriam abolemus,
“ Cum nova peregrinaque patriis & priscis præferimus.

“ Usus & consuetudo Parlamenti est lex Parlamenti,
“ Lex Parlamenti est lex Angliæ,
“ Lex Angliæ est lex terræ,
“ Lex terræ est secundum Magnam Chartam.

L O N D O N :

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TO THE PHYSICS DEPARTMENT
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T H E

Rights of Parliament, &c.

AFTER all the pamphlets published on occasion of the dispute between the colonies, and this their mother-country; all the arguments used pro and con; the pains taken by many sensible and learned men to unravel a question, which, at first view, appeared complicated, and which at present seems perfectly well understood; it may be deemed impertinent to attempt any thing more on the subject. But the lower class of people are not capable of deep reasoning; yet they have a right to be informed in all great constitutional points, and that in such a manner as shall be adapted to their understandings. I shall therefore enter upon the subject without further apology; and, as I write chiefly for their sakes, shall (attempt at least to) treat

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this important point in such a plain way, as shall render it perfectly intelligible to the meanest reader.

The Americans pretend to be aggrieved by the late Stamp-act, under pretence that it is *contrary to their charters*, and an *infringement of the rights and privileges of British subjects*, who can only be taxed by their own consent, or that of their legal representatives: they indeed, for the present, acquiesce in the supremacy of the British legislature, and therefore submit to the laws of trade and navigation (which they call external taxes) but they deny the power of the British parliament to impose internal taxes upon them, because they are not represented in a British House of Commons.

Now I will tell you, what is generally understood by external and internal taxes, or, as a great * author saith, by foreign and intestine taxes: and my meaning in telling it you, is only that you may have a little idea of what the Americans mean by the distinction; for, if you will read these few sheets with attention, you will find that the same authority which hath the right of imposing the one tax, hath also the right of imposing the other. By *external* or *foreign* tax, is meant such as is

* Petit jus parliamentarium.

raised on trade or merchandize exported or imported, or, in other terms, the laws of trade and navigation; and this the Americans sometimes condescend to allow.

By internal or intestine, such as is raised in the commerce and dealing that is at home within ourselves; and this they deny.

From this distinction of the Americans, (your colonists) there result a few points, which, that you may the more clearly comprehend, I will speak to separately, under the following heads.

1st, They allow of external taxes, as subjects of the realm, but deny internal ones, because they are not taxed by their own consent, as not being represented in a British House of Commons: and hence hath arisen a vague distinction (calculated merely to deceive you) between the representative and legislative capacity of the House of Commons, as if they could only impose taxes by their representative capacity, but could make laws and statutes by their legislative power. Now, in order to enable you to judge clearly of this matter, you must be informed,

First, Whether, by the laws of your constitution, there is any real distinction made between the right of imposing external and internal taxes.

Secondly, Whether there is any distinction between the representative and legi-

flative capacity of the House of Commons.

Thirdly, Whether the American colonists are not as fully represented in a British House of Commons, as any of you who are not electors, that is, who have not a right of voting at the election of a member of parliament.

These three great points being once discussed, I will then endeavour to shew you the falsehood of the Americans assertion, viz. that the imposing internal taxes is an infringement of their charters.

First, Whether, by the laws of your constitution, there is any distinction made between the right of imposing internal and external taxes:

By Magna Charta it appeareth, that the King cannot lay taxes upon his subjects without the consent of parliament, which consisted of the * archbishops and bishops, the abbots, the earls, the greater barons, and the tenants in capite: and therefore the King and high court of parliament constituted the supreme legislature, which was, and is, and must, from the nature of it, be endued with all powers incident to supremacy, in every country and in every government.

What those powers are you shall hear:

* Archiepiscopus, episcopus, abbates, comites, majores barones, et omnes illos qui de nobis tenent in capite.

“ What-

“ Whatsoever is regularly determined
 “ and approved of :

1st, “ By the counsel and consent of
 “ the great men, magnatum.

2dly, “ By the general agreement of
 “ the commonalty.

3dly, “ With the regal authority first
 “ obtained.

“ That hath the force of law.”—[Bruc-
 ton.

Again : The statute of Magna Charta,
 Charta de Foresta, and the other statutes,
 were made by the king and his predeces-
 sors, the peers, and the commons of the
 realm. Statute of 15 Edw. III.

Again : “ Whatever concerns the estate
 “ of the realm and people shall be treated
 “ of in parliaments by the king, with the
 “ consent of the prelates, earls, barons,
 “ and commonalty * of the realm, as
 “ hath been customary heretofore.” Sta-
 tute 17 Edw. II.

I could quote you many more authori-
 ties, but these will be sufficient to shew
 you what plenary and absolute authority,
 pre-eminence and jurisdiction were inse-
 parably united, annexed, and belonging to
 parliament. And therefore I will now

* The commons were summoned not for their
 consent to taxations, but for divers and arduous busi-
 nesses, “ pro diversis & arduis negotiis.”

set down a summary of the many great objects of parliament.

They enact laws.

They repeal former ones.

They regulate times present and to come

Transfer the rights and possessions of private persons.

Legitimate bastards.

Make laws concerning the worship of God.

Change weights and measures.

Settle the right of succession.

Determine controversies where the law is uncertain, or hath made no provision.

Value mens estates.

Impose pole money and customs.

Pardon offences.

Restore families ruined by the delinquencies of their ancestors, &c. — [Sir Thomas Smith, Secretary to Queen Elizabeth.

You see plainly then, that there is no distinction between internal and external taxes, and that the power of imposing any taxes at all is but one of those acts of sovereignty inherent in the legislative authority; and therefore a great * man who studied our constitution, and who drew all his conclusions from thence, very justly saith, “ the power of imposing taxes, and

* Petit jus parliamentarium

“ of making laws, are *convertitia* & *coincidentia* ; that is, whosoever can do the
 “ the one can do the other.” And
 this will appear evident to you, when you
 consider the nature of all taxes, and
 the end for which they are imposed, viz.
 to enable government to provide for the
 security and safety of all the British domi-
 nions, that you may enjoy your property
 in peace and quietness. Now if the par-
 liament, with the assent of the King, had
 only power to impose external taxes, that
 is, upon your imports and exports,
 and that you was to have a French or
 Spanish war, your trade must suffer in
 proportion to the means you would want
 to defend it ; and if no internal taxes were
 to be laid by parliament, there would be
 no money to fit out any fleet to protect
 your trade, which being lost, the tax
 upon it could bring in nothing at all ; and
 thus you would be wholly at the mercy of
 the enemy, not only for your trade, but
 for your lands and property ; so that the
 parliament would have only the power of
 cramping you in your trade in time of
 peace, and not of providing for your safe-
 ty in time of war. And this shews the
 folly of the distinction made by the Ame-
 ricans on this head, only calculated to
 lessen the authority of the British parlia-
 ment for their own selfish views, and to
 undermine

undermine our constitution, by denying the supremacy of the legislature; and to colour their proceedings, they make a distinction between the representative and legislative capacity of the House of Commons, as if the House of Commons had a right of imposing * external taxes by virtue of their legislative power, but not internal ones, because they do not represent the colonies: by which such members of parliament, as have property both in England and America, might tax their constituents in this country, while they kept their estates in America free from all taxations.

This is a new doctrine, void of all foundation, for the House of Commons hold their legislative power by virtue of being the representatives of the people, and by that tenure only; and one of the great prerogatives of the legislature is, the power of imposing taxes, internal as well as external; so that when one of your American colonists deny the right of parliament to lay any internal taxation on them, they must, by a parity of reason, deny all the legislative power of the House of Commons over them; for by our happy constitution the rights and privileges of a Bri-

* There is no real distinction in the constitution between the power of imposing internal and external taxations.

tish subject are not confined within the bare limits of being taxed only by their own consent : no : they can refuse obedience to every law or statute whatsoever, not made with their own consent, that is to say, which their representatives shall not have assented to ; and the House of Commons hold their right of assenting only, as hath been said, by virtue of their representation ; from whence it necessarily follows, that whatever subject can legally resist a taxation, under pretence of not being represented in a British parliament, can as legally, under the same plea, refuse obedience to any other act of parliament, and to every other act of legislative power, exercised under the different heads already enumerated, and many more which might be given ; so that if this argument of the colonists proves any thing, it proves too much, and by a fair inference, tends to release them from all dependence on the legislature of Great Britain, at the same time that they are sworn liege subjects to the King, and claim every valuable privilege of a free-born subject ; and this must appear to you all very absurd, because, in such a case, all who have a mind to be mutinous and refractory, and rise up against the power of sovereign authority vested in the King and high court of parliament, would have the same right with

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you

you, that are loyal, dutiful, free-born subjects ; and what those rights are I will set down for your satisfaction, as I find them recited in one of the American charters.

“ To inherit, or purchase, lands, tenements, revenues, services, and other hereditaments, in any part of the King’s dominions ; to occupy, enjoy, give, sell, alien, and bequeath the same, freely and quietly to possess all liberties and franchises of this kingdom.” So that they can qualify themselves for freeholders, and even become members of parliament ; and these valuable rights they actually enjoy at the time that they are refusing to submit to a just and legal act of the supreme legislature, by a silly difference of representative and legislative capacity,* a mere jingle of words, and a distinction without a difference.

You have already been told, that the legislative authority, in every country, must have all the powers incident to supremacy.

That in this country the commons hold all their share of power in the legislature by virtue of being the representatives of the people, and by that tenure only.

* There is no distinction between the representative and legislative capacity of the House of Commons.

That whoever hath the right of imposing external taxes, must also have the right of imposing internal ones, from the nature of sovereign power.

That whoever hath the power of making laws, hath the power of imposing taxes.

From all which, you will naturally conclude, that the colonists are really represented in a British parliament, without which they could not even be subject to our laws of trade and navigation, or to any other act of parliament. I shall therefore discuss this point, and leave you all to judge, whether the American colonists are not as fully represented in parliament as any of you who are non electors, that is, who have not a right of voting at the election of a member of parliament.

The proposition maintained by them is, " that no British subject can be taxed but
" by his own consent in person, or by his
" deputy." Now this is not the constitution; nor doth Magna Charta express any such thing; for by that rule no English subject would be liable to any taxation who had not a right of voting at the election of a member of Parliament; and by a very moderate computation, there would not be a fifteenth part of the people of England, or above five thousand of the inhabitants of Scotland, represented at all. Whereas all

that Magna Charta says, is, that the King shall lay no tax on the subject without consent of parliament, which is defined to be an assembly of the Archbishops, Bishops, Abbots, Earls, Greater Barons, and Tenants in Capite, who, with the King's assent, had a right of imposing taxes on all the subjects of this realm.

Such of the inhabitants of England, as did not stand in one of the abovementioned ranks, were precisely in the same predicament that non* electors, non free-holders are now; and yet, saith Sir Thomas Smith,

“ Whatever the people of Rome could
 “ do in their Comitia Centuriata, or Tribunitia, all those things are properly
 “ transacted in English parliaments, as
 “ being assemblies in which both Prince
 “ and people are represented; for we are
 “ all supposed to be present in that assembly, of whatever quality, station or dignity, whether noble or ignoble, by ourselves, or representatives.

How far this may be applicable to the colonists, can only be known by going back

* Among the non electors are the freeholders of the city of London, who, as such, have no vote at an election either in the city of London, or county of Middlesex, and yet by a moderate calculation pay above one seventeenth part of the land tax of the whole united kingdom. To these may be added the merchants of London, and those whose property is in the funds,

to their forefathers, the original planters, and examining their condition and rights at the time of their separating from their parent state; for it is a maxim well known, “ that no heir can inherit greater rights and “ possessions than the person of whom he “ inherits was intitled to :” And altho’ the rule of prescription hath place in many instances between subject and subject, and sometimes between nation and nation, yet can it never be pleaded between subject and supreme legislature.

The first American planters were originally subjects residing in England, little more than a century ago, who, upon a prospect of great advantages to themselves and their posterity, most humbly petitioned that they might be permitted to quit their native country and settle in America: The crown attended to their petitions, and graciously granted their request, for which two special reasons were assigned; first, the extending the christian religion and converting unbelievers to the true faith; secondly, the extending of the British dominions; and, accordingly, in the royal charters which King James the first granted them, and whereby they became a corporation, these two reasons are express.

Now at the time that these planters obtained this charter, there was a parliament holden.

Some

Some of them were freeholders, and had voted at the election of members for this parliament; others were non electors, who were, as they are now, represented by the freeholders; for all belonged to some county, city or borough. It is plain then, when they emigrated or left this country to seek their fortunes in a strange land, they were all of them represented in the parliament then existing, as fully as all of you now are in the present parliament.

In the next parliament, which was held after they went away, such of them as retained any freehold in England had a right of voting at the ensuing election; such who had sold their freeholds, and such who had none, were exactly in the same situation as all the rest of his Majesty's English subjects who were non electors, and had no right of voting at an election. The first, that is, those who retained any freehold, although they were debarred the exercise of their right by absence, yet it was a voluntary absence; and all of you know, that when any freeholder is absent on such an occasion, it is his own fault; but yet he must abide by the decision of the remaining freeholders who do vote: The two last, that is, those who had sold their freeholds, or those who had none to sell, as they must have abided by the election of the freeholders who voted, had they been present; so

so their absence, whether in England, on the sea, or upon the land of America, made no difference. It is plain then that the first planters, the forefathers of the present colonists, were not only represented in parliament at the time of their emigration, but even after it, during the course of their lives. And indeed this must have been the express condition on the side of the first planters, when they were suffered, under a royal charter, to quit this country for good and all, to go and live beyond seas, and to retain all the noble privileges for them and their posterity of free-born subjects: I say, express conditions, if not in words at least by tacit consent and fair implication; for if all free-born subjects, resident now in Great-Britain are under the power of the supreme government of the realm, all who claim such privileges must be equally so; without which they can have no right to them: but their very condition at the time of their emigration will prove the fact. Suffered, as they were, to absent themselves, they were neither convicts exiled to a foreign land, nor orphans destitute of a tender parent, willing and able to protect them: No; they were adventurers who sought to better their fortunes in a country unknown; who had to combat with the dangers of the sea; a difference of climate; a set of barbarians, uncivilized and jealous.

jealous of their property ; an uncultivated country and numberless other difficulties, and who relied upon the constant assistance and protection of England for the establishment of their colony in time of peace, and the defence of it in time of war. No subjects then of this realm could be more dependant upon the mother country, than the first planters were ; evidently represented in parliament, acknowledging the supremacy of the legislature, and confident of their protection, they quitted England, to leave to their children all the rights they enjoyed themselves, with the valuable acquisition of territories, which should enrich their posterity. The present colonists are that posterity ; they enjoy all the rights and privileges of their forefathers, with the encrease of territory, although not of dominion ; for according to the maxim already laid down they cannot possess more rights and privileges over their mother country than their forefathers had to bestow.

As representatives therefore of the rights of their progenitors, in the same light that an heir apparent is the representative of an estate entailed upon him, the present colonists inherit the privileges of their forefathers, and are to be considered as belonging to those boroughs, cities, or counties, from whence their forefathers issued : they stand
in

in their place, and must be reckoned among the people thereof, non presidents, non electors, or non free-holders, but still virtually represented in a British parliament, as fully as the non electors resident in Great-Britain are at this time.

Judge now for yourselves, whether these American colonists,* these subjects of the realm, although possessing a foreign land, are not equally represented in parliament with all of you who have no right of voting at an election, and yet are indispensably bound by duty, and that duty resulting from your original constitution to pay implicit obedience to all laws, statutes, taxations, whether internal or external, authorized, prescribed and warranted by the supreme legislative of the land, that is assented to by the King, lords, and commons in parliament assembled, and judge impartially what grounds these colonists can have under the foregoing pleas for their present defection, by which they have involved, at least for the time being, many eminent merchants and mechanics of this land in the greatest difficulties.

Let us now see whether their last resource of an *infringement* of their charters hath more validity in it than all the rest.

* The colonists are virtually represented in parliament as fully as the non electors resident in Great-Britain.

To conclude that any charter is incapable of the controul of that government under which it holds, is to suppose that such charter contains prerogatives and powers equal with the government itself, which is a greater absurdity ; for some degree of superiority must remain in that power which gives, over that power which receives ; otherwise, from the instant the charter is perfected, the grantees become a sovereign power, neither directly or indirectly dependant upon that government which gave them constitution. Now the greatest of all grants in this country is held by parliamentary charter ; and unless I am misinformed, this is the case of the East-India company ; yet should they attempt to shake off the sovereignty of this country over them, I appeal to themselves, whether they would not violate their charter ; or whether, great and extensive as their privileges may be, there are not such restrictions in their charter, as effectually manifest the superiority of that power which gave it, over that which received it.

A parliamentary charter, I have said, is the greatest of all others, as whatever conditions are granted therein are controulable by no power whatsoever, because it is an act of the legislature of the land, that is, of sovereign authority, beyond which no power over the British dominions can exist :

exist: but this is not the case of the Americans; they hold by a royal, not parliamentary charter, the difference of which I will now explain to you, as derived from the constitution of this country.

The sovereign * power is agreed to be in the king, but it is a two-fold power. The one in parliament, as he is assisted by the whole state; the other out of parliament, as he is sole and singular, guided merely by his own will. And of these two powers the one is greater, and can direct and controul the other; and that is the “suprema potestas,” or sovereign power of the realm; the other is “subordinata,” that is, subordinate to it.

The king’s power then in parliament exceeds his power out of parliament, as far as supreme and sovereign authority can exceed limited prerogative in a mixed state.

The king may † make such a grant out of parliament as shall bind him and his successors; he cannot revoke it, nor his successors; but by his power in parliament he may defeat and avoid it.

Again, 11. Rep. 87. Dyer 52. The King cannot make a grant “non obstante,” any statute made, or to be made; if he doth, any subsequent statute, prohibiting

* Petit.

† Petit.

what is granted, will be a revocation of the grant.

The inference from this is plain and obvious: that no royal charter, granted out of parliament, can preclude the high prerogatives of parliament, or exempt the colonies from their plenary jurisdiction and controul over leige subjects of the King.

Nor is it a consequential argument, because any of the colonies have, by a royal charter, a power of making laws for their own community, if not repugnant to the laws of England; or of imposing taxes by their own representatives, for their internal police, that therefore they shall not be liable to taxation of any kind by act of parliament; since the lesser power never can exclude the greater, and that we have seen the King's authority out of parliament is that lesser power, and his authority in parliament that sovereign power which can controul and give the law to all others; and here let it be remembered, that the late Stamp-act had the royal assent.

“ Let us suppose, that the usage of
 “ raising money in the several colonies,
 “ for separate and local purposes, was
 “ founded upon an act of the whole le-
 “ gislature,” (that is a grant by a parlia-
 “ mentary charter) “ then the colonies
 “ would,

“ would, in that respect, be in the same
 “ situation with the several counties in
 “ England, which do, by authority of par-
 “ liament, raise money within themselves,
 “ for their separate and local purposes :
 “ but no man ever conceived, that this
 “ regulation of internal police would
 “ give rise to a debate, whether every
 “ county was not a kingdom ?”

The royal charters themselves differ in
 extent of privileges; the utmost whereof
 is contained in that of Maryland, where-
 in the king covenants for himself, his
 heirs and successors, that “ he and they
 shall at no time hereafter set, or cause to
 set, any imposition or other taxation upon
 the lands, goods, or chattels, within the
 said province, or upon any goods or mer-
 chandize,” which includes both internal
 and external taxes; yet still this is but a
 royal grant, out of parliament, binding
 the royal prerogative, but not excluding
 his greater power in parliament, where he
 is in the fullness of his majesty, that is,
 in the fullness of his sovereignty over all
 the British dominions.

Granting, therefore, the utmost lati-
 tude to the charters of the American co-
 lonies, by taking it from the Maryland
 charter, it is very plain they cannot be
 absolved from an implicit obedience to
 acts of parliament; because no power can
 give

give them that which it hath not itself; and that the King hath not, by his prerogative, the right of precluding the privileges of parliament; and, therefore, a submission * to any act of parliament can never be an infringement of their charters: but since these people lay so much stress upon those charters, it may be worth while, at this crisis, to lay before you the conditions of some of them, by which you will be enabled to judge how far they, who so loudly and tumultuously complain of a breach of the rights and privileges belonging to a British subject, have performed the articles of their respective covenants.

On † occasion of the Stamp-act, the general assembly of the Virginians came to several resolutions, couched in such terms, that the governor thought fit to dissolve them.

In Virginia also the justices of Westmorland met, and unanimously resigned their offices, lest they should become instrumental in the destruction of their country's most essential rights and liberties; that is, lest they should assent to the Stamp-act, not imposed on them (according to American logic) by their own con-

* Submission to any act of parliament is not an infringement of a royal charter.

† Owen's Collection of Charters.

sent, or their legal representatives in British parliament.

Now it is remarkable, that the general assembly of Virginia did not constitute the supreme court which was to make laws, or impose taxes, for that province: No; by the 8th article of the first and second charters of King James I. this power was expressly reserved to a council which was to be ALWAYS resident in England, to have the superiour management and direction of all matters that might concern the province, and was to be called the King's own council of Virginia: many peers of the realm, as well as commoners, composed this council, which had full power to make all manner of orders, laws, &c. at their discretion, and to admit and receive any person into their company, corporation or freedom; and from the instant the colony had the requisite notice of this the King's pleasure, all laws formerly made by them were to cease.

The charter of the Pensylvanians is still more explicit.

“ Penn and his heirs shall be authorized
 “ to make laws, provided a transcript of
 “ the same be transmitted to England,
 “ to be confirmed by royal authority;
 “ otherwise to be void.”

Grants full licence to trade, but according to the laws made, or to be made:

“ Saving

“ Saving unto us, our heirs and succeſ-
 “ fors, ſuch impositions and customs as
 “ by *act of parliament* are and ſhall be
 “ appointed; and reſerving a power to
 “ ſeize and reſume the government of the
 “ province, on non-payment, until ſuch
 “ payment ſhall be made good.”

In oppoſition to ſuch reſtrictions, and
 in the face of their charter, the aſſembly at
 Philadelphia came to divers reſolutions,
inter alia.

“ Reſolved, N. C. D.

“ That it is the inherent birth-right
 “ and indubitable privilege of every Bri-
 “ tiſh ſubject to be taxed only by his
 “ own conſent, or that of his legal repre-
 “ ſentatives, in conjunction with his ma-
 “ jeſty, or his ſubſtitutes.

“ That the only representatives of the
 “ inhabitants of this province are the per-
 “ ſons they annually elect to ſerve as mem-
 “ bers of aſſembly.

“ That the taxation of the people of
 “ this province, by any other perſons
 “ whatſoever than ſuch their represen-
 “ tatives in aſſembly, is unconstitutional,
 “ and ſubverſive of their moſt valuable
 “ rights.”

The colony of Maſſachuſett's Bay were
 foremoſt among the refractory, and chimed
 in with the moſt tumultuous; in conſe-
 quence of which their governor, Mr. Ber-
 nard,

nard, a sensible and wise man, and truly zealous for their interests, forewarned them of the consequences which might attend their misbehaviour, by a speech, of which the following is an extract * :

“ I shall not enter into any disquisition of the policy of this act; I have only to say, it is an act of parliament of Great Britain, and as such ought to be obeyed by the subjects of Great Britain. And I trust that the supremacy of that parliament over all the members of their wide and diffused empire never was, and never will be, denied within these walls.

“ The right of the parliament of Great Britain to make laws for her American colonies, however it has been controverted in America, remains indisputable at Westminster. If it is yet to be made a question, who shall determine it but the parliament? If the parliament declares, that this right is inherent in them, are they like to acquiesce in an *open and forcible opposition* to the exercise of it? will they not more probably maintain such right, and support their own authority?

“ It is said, the gentlemen who opposed this act in the house of Com-

* Owen's Collection of Charters.

“ mons, did not dispute the authority of
 “ parliament to make such a law, but ar-
 “ gued upon the inexpediency of it at
 “ this time, and the inabilities of the
 “ colonies to bear such an imposition :
 “ these are two distinct questions, which
 “ may receive different answers.

“ The power of taxing the colonies
 “ may be admitted, and yet the expedi-
 “ ency of exercising that power at such a
 “ time may be denied : but if the ques-
 “ tions are blended together, so as to ad-
 “ mit of but one answer, the affirmative
 “ of the right of parliament will conclude
 “ for the expediency of this act.

“ Consider, therefore, gentlemen, if
 “ you found your application for relief
 “ upon denying the parliament's right to
 “ make such a law, whether you will not
 “ take from your friends and advocates
 “ the use of those arguments which are
 “ most likely to procure the relief you
 “ desire.”

Such a speech as this became a go-
 vernor of a British colony, at the same
 time that it manifested his zeal for the in-
 terest of that province over which he pre-
 sided. It also shewed his knowledge of
 the constitution of this country, and of
 the powers of the supreme legislature, to
 which we are all bound in implicit obe-
 dience, yet with a reserve of setting forth
 our

our grievances by humble petitions, as long as we do it in a submissive manner, as becomes dutiful subjects, but not by riot and tumult, and an open and forcible violation of the laws. And therefore, Mr. Bernard saith, obey the act for the time, remonstrate against it as a burthen too heavy for you to bear, and rest assured, that Great Britain, ever tender to her colonies, which she considers as her children, will attend to your petitions, and give you all the reasonable relief you can desire.

But sensible and humane as this speech was, the Massachusetts gave no ear to it; but on the contrary, like a parcel of wild Enthusiasts, they presented to their governor a passionate and inconclusive address; in which, among other things, they say, “ We cannot but be surprised
 “ at an intimation in your speech, that
 “ the parliament will require a submission
 “ to an act as a preliminary to their granting
 “ relief from the unconstitutional burthens of it, which we apprehend includes a suggestion in it far from your
 “ Excellency’s design, and supposes such
 “ a wanton exercise of mere arbitrary
 “ power, as ought never to be furnished
 “ of the patrons of liberty and justice.
 “ We beg leave to observe, that the character of this province invests the general

“ assembly with the power of making
 “ laws for its internal government and
 “ taxation, and that this charter has ne-
 “ ver yet been forfeited. The parliament
 “ has a right to make all laws within the
 “ limits of their own constitution, they
 “ claim no more.

“ There are certain original rights be-
 “ longing to the people which the parlia-
 “ ment itself cannot divest them of :
 “ among these is the right of representa-
 “ tion in the same body which exercises
 “ the power of taxations, &c.

“ We hope we may, without offence,
 “ put your Excellency in mind of that
 “ most grievous sentence of excommuni-
 “ cation, solemnly denounced by the
 “ church, in the name of the most sacred
 “ Trinity, in the presence of King Henry
 “ the III^d, and the estates of the realm,
 “ against all those who should make sta-
 “ tutes, or observe them being made,
 “ contrary to the liberties of Magna
 “ Charta.” The substance of all which
 may be collected within very few words.

First, They accuse the British parlia-
 ment of a wanton exercise of mere arbi-
 trary power, if they insist on obedience
 to the stamp act, and then they call them
 the patrons of liberty and justice. This
 is to break a man's head, and then give
 him a plaister,

Secondly

Secondly, They talk of their inherent rights, of the rights of representation in the same body which exercises the power of taxation.

Thirdly, They claim, by their charter, the power of making laws for the internal government of the province and its taxation, and assert, they have never forfeited that charter.

Fourthly, They quote a precedent in the reign of Henry the III^d, to shew the supremacy of the church over Magna Charta.

By this time you all of you know, that the power of making laws, or of imposing internal taxes for the police of any community, held by royal charter, cannot preclude the rights of the supreme legislature over that subordinate community: and, therefore, that you may not be confused by this jargon of address, I will confine myself to those parts of it which relate to the charter of these colonists, and to the remarkable precedent they have quoted.

The Massachusetts had a charter granted them, which they forfeited in the year 1686, chiefly by a conduct parallel to this in which they appear to take so much glory: but that you may not think me partial, I will give you a short account of it, as related by Mr. Hutchinson, their lieutenant

lieutenant governor, in his history of Massachusetts Bay, published but last year.

“ It was a difficult thing, saith he, for
 “ the Massachusetts to conform to the acts
 “ of trade and navigation : they acknow-
 “ ledge, in their letter to their agents
 “ 1679, they had not done it. — They
 “ apprehend them to be an invasion of the
 “ rights, liberties, and privileges of the
 “ colony, *they not being represented in par-*
 “ *liament* ; and according to the usual say-
 “ ings of the learned in the law, the laws
 “ of England were bounded within the
 “ four seas, and did not reach America.”

They were at that time then by one degree more audacious than they are now, for they even denied the power of parliament to impose external taxes, and refused submitting to the laws of trade and navigation. And what was the consequence of it ? Why, as Mr. Hutchinson tells us, the whole colony suffered the loss of their charter, this being the greatest article of charge against it. In consequence of which, royal commissions were sent to govern the province ; nor could they get another charter, notwithstanding all their solicitations, until the year 1692, under King William and Queen Mary ; in the preamble of which, the vacating their former charter is expressed as follows :
 “ And whereas, in the term of the Holy
 “ Trinity,

“ Trinity, in the 36th year of the reign of
 “ our dearest uncle King Charles II. a judg-
 “ ment was given in our court of Chan-
 “ cery, then sitting at Westminster, upon a
 “ writ of *scire facias*, brought and prose-
 “ cuted in the said court against the go-
 “ vernor and company of Massachusetts
 “ Bay, in New England; and that the
 “ said letters patent of our said royal
 “ grandfather King Charles the Ist, bear-
 “ ing date at Westminster the 4th day of
 “ March, in the fourth year of his reign,
 “ made and granted to the said governor
 “ and company of Massachusetts Bay, in
 “ New England, and the enrollment of
 “ the same, should be cancelled, vacated,
 “ annihilated, &c.”

One should have thought, that the for-
 feiting of one charter would have been a
 warning to these people not to rise up
 against English acts of parliament; but it
 seems their infatuation continues, and they
 now renew their claim of taxing them-
 selves, because they are not represented in
 a British parliament, and that no subject
 can be taxed but by his own consent.

That they are represented in a British
 parliament as far as non electors can be,
 which is, as far as the majority of the in-
 habitants of Great Britain are, has been
 already shewn: but as they insist, that
 every subject must be taxed by his own
 consent,

consent, or his legal representative, it necessarily follows, that unless their assembly, which voted the address to their governor, Mr. Bernard, consisted of members legally elected, according to their present charter, that very assembly is unconstitutional, according to their own way of reasoning, and in the full exercise of a mere arbitrary tyrannical power : and their arguments, which can never be valid, against the supremacy of the British legislature, will yet be the most forcible ones against the legality of their proceedings, even within their own community, and will add double weight to their already flagrant and iniquitous opposition to the just authority of the British legislature.

“ The great and general court of assembly (saith their charter, shall consist of
 “ such freeholders of our province, as
 “ shall, from time to time, be elected, or
 “ deputed, by the major part of the free-
 “ holders, and other inhabitants : pro-
 “ vided always, that no freeholder, or
 “ other person, shall have a vote at the
 “ election of members to serve in the
 “ great and general court of assembly, to
 “ be held as aforesaid, who, at the time
 “ of such election, shall not have an estate
 “ of freehold in land, within our said pro-
 “ vince or territory, of the value of forty
 shillings

“ shillings *per ann.* at least, or other estate to the value of fiftypounds sterling.”

“ And again, “ grants, establishes, and ordains, that for ever after there shall be a liberty of conscience allowed, in the worship of God, to all Christians (except Papists) inhabiting, or which shall inhabit, or be resident within our said province or territory.”

Nothing sure can be more plain or precise. The requisites for a vote at an election of a member to serve in their general assembly are, a freehold of forty shillings a year, or an estate to the value of fifty pounds : nor can any inhabitant forfeit his right of freedom by any difference of opinion in religious points. These are express conditions in their charter ; how far they have kept up to them, their own lieutenant governor shall declare.

“ None may now be admitted a freeman of that company, unless he be a church member thereof (*i. e.* a congregational puritan.) None have voice in the election of governor, deputy, and assistants. None are to be magistrates, officers or jurymen, grand or petit, but freemen. The ministers give their votes in all elections of magistrates. Now the most of the persons at New England are not admitted of their church, and therefore are not freemen ;

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and

“ and when they come to be tried there,
 “ be it for life or limb, name or estate,
 “ or whatsoever, they must be tried and
 “ judged too by those of the church, who
 “ are in a sort their adversaries : how
 “ equal that hath been, or may be, some
 “ by experience do know, others may
 “ judge.

“ Had they been deprived of their ci-
 “ vil privileges in England by an act of
 “ parliament, unless they would join in
 “ communion with the churches there,
 “ it might have very well been the first
 “ in the roll of grievances.”

Now I leave you all to judge, how far
 this assembly can be deemed a legal repre-
 sentation of all the freemen of that pro-
 vince, composed as it is of a set of puri-
 tanical zealots, elected only by those of
 their own communion, and not by the
 majority of the freemen ; and whether
 the freemen, who are excluded, may not
 justly complain of an infringement of their
 charter by this assembly, which is now
 daringly attacking the rights of parlia-
 ment.

As to their quotation of a sentence of
 excommunication pronounced against the
 King and the state in the reign of Henry
 the III^d, it is little to the purpose, unless
 a puritan of their persuasion was to be
 invested with papal power over the British
 dominions ;

dominions ; but as they have chosen to go so far back into our history for a precedent, I will meet them half way, and quote you an answer of the same King on a similar occasion.

In the year 1252-37 Henry III. the master of the hospital of St. John of Jerusalem in Clerkenwell, waiting patiently for a proper opportunity of speaking with the King concerning an injury done him, opened his complaint and showed some charters of protection granted by former kings, and by the King himself ; to whom the King with a loud voice replied in anger, and with a great oath, “ you and the templers have
 “ so many liberties and charters, that your
 “ superfluous possessions make you proud,
 “ and your pride makes ye mad : Those
 “ things therefore ought prudently to
 “ be revoked, which were imprudently
 “ granted ; and advisedly to be resumed,
 “ which were unadvisedly squandered a-
 “ way.”

None of you, I am persuaded, wish to see such a sentence put in execution against your colonies, but all will agree that their conduct has been highly undutiful and refractory, and that the reasons they alledge are weak and inconclusive ; for by this time no doubt it is plain to you,

That your colonies are annexed like so many appendages to the British dominions,

That the inhabitants are liege subjects, and hold their possessions and privileges by charter from the King out of parliament, controulable by the King in parliament, according to the maxim herein before mentioned, that the King cannot make a grant non obstante any statute made or to be made; if he doth, any subsequent statute prohibiting what is granted, will be a revocation of the grant.

That their charters can be vacated, and cancelled in a Court of Chancery, as that of the company of Massachusetts bay was.

That the lesser power granted by the King to the courts of assembly, to impose taxes for the internal police of their separate communities, can never preclude the greater power of parliament to tax the whole colonies.

That the same authority which hath the right of imposing external taxes, must from the nature of our constitution have an equal right of imposing internal ones.

That the power of taxing and making laws are coincidents and convertible.

That the distinction of a representative and legislative capacity in the House of Commons, is nothing but a jingle of words, a bare distinction without a difference.

That the colonists are as fully represented in parliament, as all the non electors of Great-Britain; that is, as the far greater
part

part of its inhabitants, and therefore, on all the above accounts, that the power of binding the colonies by all manner of laws, taxes internal and external that the King and parliament shall think fit to impose, is clear, indisputable, and uncontrovertable; for the colonists are as much under the dominion of the supreme legislature as any of us all, and their being permitted to retain the rights and privileges of a free born subject, is the return of a supremacy for obedience to its laws and ordinances.

One of the reasons assigned in a statute* 15th Car II. for prohibiting all European commodities from being imported directly to America, was to keep the colonies in a firmer dependance upon England, and render them more beneficial to it. Another statute† (Scobell's Acts. 1656) speaking of the plantations, saith, "which are and ought to be subordinate to and dependant upon England; and hath ever since the planting thereof been, and ought to be subject to such laws, orders and regulations as are or shall be made by the parliament of England." Nor should it be objected that this last act was made in the time of the commonwealth; since, in whatever hands the supreme power of Great-Britain may be vested, the colonies must follow the

fate of

* Cap. 7. Par. 5.

† Cap. 28.

that

that government as long as they are annexed to the British dominions; for, by the same rule, the right over Jamaica might be denied, because it was conquered in the time of Oliver Cromwell. Neither can they draw any inference from an argument made use of by some of their advocates; that a money* bill takes its rise in the House of Commons, and therefore the Commons only have a right of imposing taxes. The fact is true, but the conclusion false; it is the King and parliament only that have a right of imposing taxes on the subject: every bill must take its rise in one house or other; and while the House of Lords hath an equal right with the Commons of debating upon the expediency of a money bill, and of rejecting it; and while the King retains the royal prerogative of refusing his assents, that is, while our constitution remains entire, it matters not to the present point, in which house a money bill takes its rise, because it concludes not for or against the present question, viz. The right of the British legislature to impose internal as well as external taxes on the colonies.

* Originally this could not be the case; because the parliament sat in one house, nor is it our business to enquire when and how the two houses agreed upon separate privileges.

Upon the whole, then, the present defection of the colonists is as groundless as it is presumptuous and ungrateful to their mother country, by whose indulgence, assistance and protection, they hold all their valuable possessions.

If they have really been aggrieved, and cramped in their trade beyond the bounds of moderation, and without any superior advantages resulting therefrom to this country, (for according to the custom * of other countries, we have a right to keep our plantation trade to ourselves;) let them remember they have also been led into the channel of redress by some sensible men among them, whose hearts inclined to their benefit, whose heads laboured for their true interest, and whose wholesome advice they have contemned and trod under foot; and in lieu thereof have set up a mock congress, an assembly of the representatives of representatives, wherein they have usurped a power as unconstitutional as rash and intemperate, which, were it not for the tendernefs that Britain hath, and I hope ever will have for all her children, might subject them to the fate of the Massachusetts in 1686.

But it hath been urged, that former wise ministers have ever declined exer-

* 15 Car. II. Cap. 7. Par. 5

cising a power of internal taxation over the colonies, from an unwillingness to give the least umbrage to any of his majesty's subjects, from whose trade Great Britain was so highly benefitted :—be it so ; this argument reacheth no farther than to the expediency of the Stamp-act, and not to the right of making it.

That right hath now been exerted, and as daringly denied by acts of open and forcible resistance, so near a-kin to rebellion, that it is become very hard to draw the line of distinction : and, therefore, that right is now, or never, to be ascertained. Let us then, in a firm confidence of the wisdom and justice of parliament, look up to it with all due deference and obedience, yet with hopes, that this important point, which is, for ever after, to establish the just and high supremacy of the British legislature, will be finally settled ; not evasively, by a few general terms, which may tend rather to leave the question in suspense, but by express words, asserting the undoubted right of parliament to impose internal, external and all other taxes, (if there can be any other) on the colonists, equally as on the inhabitants of Great Britain.

Let us hope that due attention will be paid to that part of the Massachusetts's address

dress, which affects surprize at an intimation, “ that the parliament will require
 “ a submission to an act, as a preliminary
 “ to their granting relief from the un-
 “ constitutional burthens of it; which
 “ they call a wanton exercise of mere
 “ arbitrary power,” and that so daring an insult will manifest the necessity of supporting the Stamp-act, however altered or modified in behalf of the colonies, till they dutifully submit to it, that the supreme legislature may not suffer in its rights, nor the colonists think they may make terms with Great Britain sword in Hand.

We are all sure that the parliament will ever attend to the petitions of dutiful subjects, will relieve them where they are aggrieved; and none of his majesty’s subjects have had greater proofs of their watchful attention and indulgence than the Americans have.

If they have suffered by any late restrictions on their trade with Spain, or other European powers, by duties on linen or molasses, or in any other shape, the parliament is open to their complaints, and prepared to redress them; but, to borrow an expression, “ if it is once under-
 “ stood, that the executive power is to
 “ wait for, and be guided by the advice

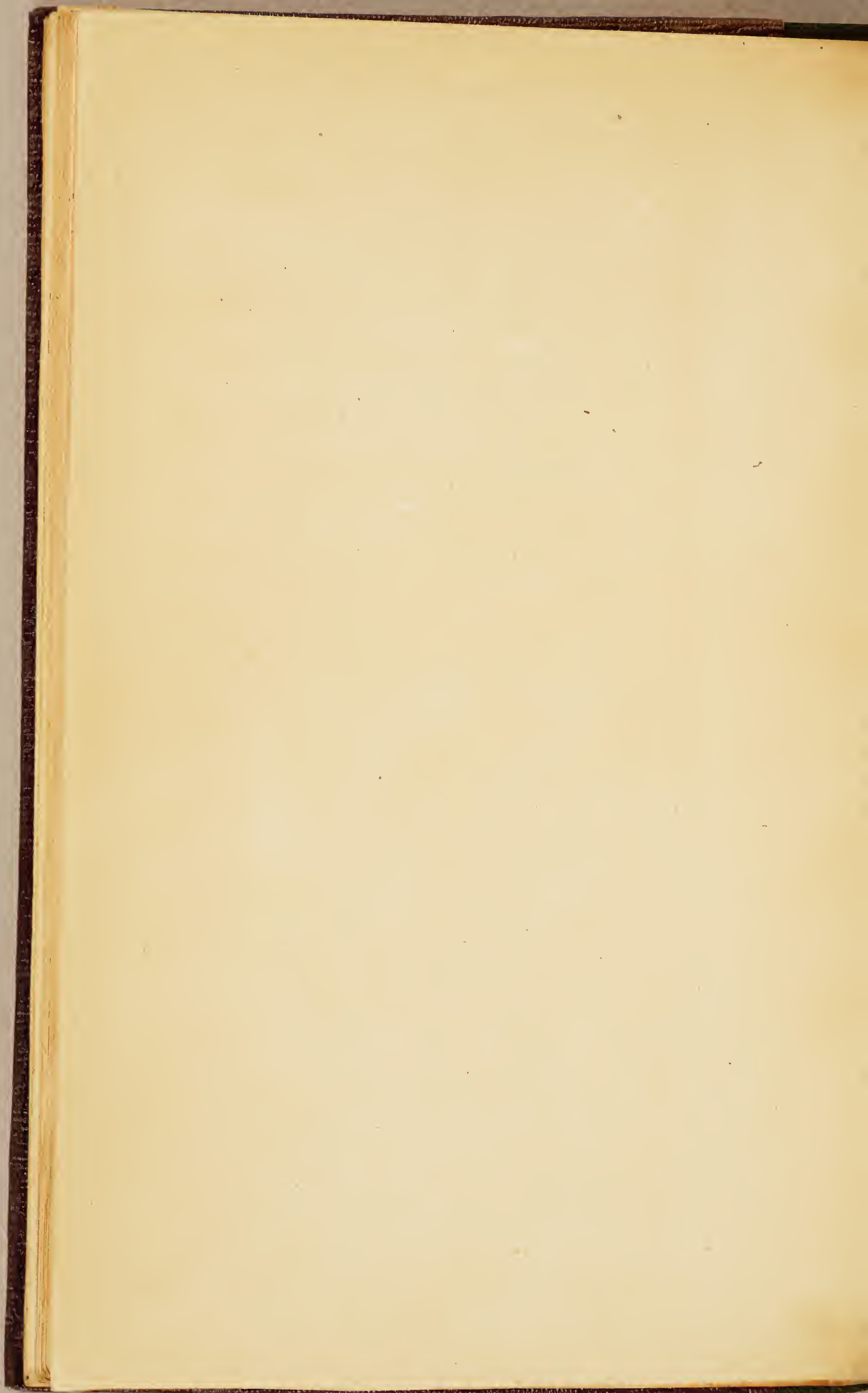
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“ of

(44)

“ of the people, they then direct the ex-
“ ecutive power, or, in other words, be-
“ come the executive power themselves;
“ from whence it follows, that a great
“ empire is in imminent danger, when
“ the executive power is exercised by the
“ people.”

F I N I S.



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